IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.174 OF 1991

New India Assurance Co. Ltd.,
Solapur ...Appellant
Vs.
R. Thippamma & Ors. ...Respondents

Mrs U.K. Sanil for the Appellant.
Mr S.M. Vidyarathi for the Respondent No.4.

CORAM : ABHAY S. OKA, J.

DATE : APRIL 20, 2006.

JUDGMENT:

1. Heard the Advocates appearing for the Appellant and Respondent No.4. None for the other Respondents.

2. The Appeal is by the original Opponent No.4-New India Assurance Company Ltd. The Appellant has taken exception to award which has been made in a claim under section 110A of the Motor Vehicles Act, 1939 granting compensation in favour of the Respondent No.1 in the sum of Rs.54,600/- together with interest and costs. The case of the original claimant is that the deceased was travelling in a taxi which is insured with the Appellant. The accident was as a result of a dash given by a truck which was insured with the Respondent No.4 herein. The learned Member of the Tribunal found that the driver of the taxi and the

driver of the truck were negligent. Therefore, 50% of the compensation was ordered to be paid by the owner, the driver and the insurance company of the truck and remaining 50% was made payable by the Appellant herein.

3. The learned Advocate appearing for the Appellant brought to my notice that the insured person namely the owner of the taxi or his legal representatives were was not impleaded as parties to the claim. It is, therefore, submitted that as there is no award made against the insured, the Appellant-Insurance Company is not liable to pay any compensation.

4. Perusal of the record shows that the owner of the taxi died in the same accident. However, the legal representatives of the said owner/insured could have been made parties to the claim. In my view, there was no jurisdiction in the Tribunal to pass an award against the Appellant-Insurance Company without passing any award against the insured. In this case the legal representatives of the owner were not even impleaded as parties to the Claim Petition. Therefore, the impugned award to the extent to which the Appellant is held liable deserves to be quashed

and set aside.

5. Hence, I pass the following order:

(i) The impugned judgment and award in so far as it directs the Appellant to pay compensation of Rs.27,300/- to the claimant together with interest and costs is quashed and set aside. Rest of the award as against original Opponent Nos.1, 2(A) to 2(C) and 3 is maintained as it is.

(ii) There will be no orders as to costs.

JUDGE